Filed 7/22/19 In re C.G. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re C.G., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. M.G., Defendant and Appellant.	G057466 (Super. Ct. No. 17DP0773) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Gary L. Moorhead, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

On February 13, 2019, this court denied the mother's petition for writ of mandate challenging the juvenile court's order setting a hearing pursuant to Welfare and Institutions Code, section 366.26. (All further statutory references are to this code.) On March 14, 2019, the juvenile court terminated the mother's parental rights and the minor was placed for adoption. In this appeal, the mother contends the juvenile court erred by failing to preserve her parental rights under the beneficial exception found in section 366.26, subdivision (c)(1)(B)(i). Finding no error, we affirm the postjudgment order.

I

UNDERLYING FACTS

The following are the facts from our February 13, 2019 opinion denying the mother's petition for writ of mandate. Thus, we will be quoting extensively from *M.G. v. Superior Court* (Feb. 13, 2019, G057002) [nonpub. opn.].

"In July 2017, a senior social worker requested a protective custody warrant to remove C.G. (the minor), born in 2013, from the care of the mother, M.G., the petitioner. The request states the minor's primary care physician 'is in opinion that the mother, suffers from Munchausen Syndrome by Proxy . . . with the child. The mother has exposed the child to excessive medical visits as evidence [*sic*] by PHN[1] Bailey's report stating that the mother brings the child in for multiple visits with same complaints and insisting that the child needs treatments. Per PHN Bailey's report, multiple doctors have expressed that there is nothing medically wrong with the child. The mother continues to put the child through unnecessary treatment and medical tests which poses risk for the child's physical and mental health. [¶] The mother's history shows that a previous child was removed from her care in 2010 by Irvine Police Department due to excess medical exams, medial [*sic*] visits, and child abuse investigations; the child was

[1] "These initials are not explained. We assume they mean Public Health Nurse."

three years old. . . . The mother failed to reunify with this child. [¶] It is Social Services opinion that the mother is in denial of a severe mental health illness and is putting the child at risk as evidence [*sic*] by the excess doctor visits with the child. The mother has made efforts in the past to evade Social Services. In a prior investigation in January 2017, the mother did not make herself available to the Social Worker. Per the mother's current and previous CalWORKs Worker, the mother is paranoid and hesitant to provide information on her whereabouts. Social Services is in fear that the mother will abscond with the child when she becomes aware of the allegations in efforts to prevent removal of the child. SSW Glaser has made several attempts to make contact with the mother and child in-person and by phone but has not been successful.' A protected custody warrant was granted by the juvenile court on July 13, 2017. The minor 'was placed into protective' custody that same day.

"The juvenile dependency petition states: 'The mother has subjected the child to numerous unnecessary medical examinations. From October 15, 2016 through June 30, 2017, the mother had the child seen by medical professionals on at least 30 separate occasions. Multiple medical professionals reported that there was nothing medically wrong with the child and the exams were generally normal. Competent medical professionals opine the mother's behavior constitutes medical child abuse.' Regarding the other child who was removed from the mother, a social worker's report states that child was taken to at least 123 unnecessary medical examinations 'to check for sexual or physical abuse, none of which have been substantiated.'

"After removal, the minor's medical records were reviewed by Sandra Murray, M.D., at the University of California, Irvine. The doctor's report states: '[The minor] is now 3 years 10 months old. In the records I reviewed [the minor] had: 45 visits to one pediatrician (11-4-14 to 5-30-17), 3 visits to another pediatrician (6-12-5-30-17), 10 ED visits (9-26-14 to 6-26-17), and 12 specialists visits (12-9-14 to 7-5-17). There was also an unknown number of other visits that are referred to in the notes. This

is an extraordinarily large number of visits for a healthy child.' The doctor states the minor had been diagnosed with 'normal childhood viral infections: upper respiratory illness . . . , hand, foot and mouth disease, viral rashes, and ear infections,' and that '[t]hese are very common in all children.' The medical records state the minor 'has been on a variety of allergy medications.' The minor had also been diagnosed with asthma and was on albuterol and steroids for that condition, but notes that '[t]his diagnosis appears to have been made based solely on symptoms reported by his mother.' The minor also received speech therapy for four months. The doctor concluded: 'The excessive medical intervention into [the minor's] life meets the definition of medical child abuse.' The doctor added that medical child abuse 'can result in serious physical injury, detrimental mental health issues, and sometimes death.'

"Regarding the mother's taking the minor for medical examinations after removal, the caregiver reported to Orange County Social Services Agency (SSA) that on December 31, 2017, the mother took the minor to the emergency room because he was coughing and throwing up. The caregiver went to the emergency room and reported the doctor said the minor was fine. On April 8, 2018, the mother again took the minor to the emergency room. The mother told SSA that she was instructed by Hoag Hospital to follow up with a pediatrician for 'eyelid lesion and Allergic Rhinitis.' On April 20, 2018, the minor was seen at a dermatology facility for warts. The child was treated and the mother was 'advised of blistering reaction after treatment.' She was told to apply Vaseline to recovering areas and to give Baby Tylenol for pain. The mother was warned to adhere to the prescribed treatment because the 'condition could easily spread.' On May 12, 2018, while the mother was at the hospital for herself, she 'asked the doctor to look at [the minor] and hear [the minor's] breathing and cough.' The doctor gave her a prescription for the minor's cough.

"On June 6, 2018, the minor's counsel requested the juvenile court to change its visitation order from unsupervised to supervised visitation, stating that the

'[m]other now believes and insists that the minor has Sepsis. The mother has again subjected the minor to unnecessary doctor appointments and examinations during unsupervised visitation.' On June 8, 2018, the court made the following order: 'Court orders mother's visitations be supervised until the next court date of 7-9-18. Mother is not authorized to take the child to the doctor or hospital unless it is a medical emergency. SSA is ordered to evaluate all of mother's concerns regarding minor's symptoms and need for pediatrician.' On July 9, 2018, the court ordered the mother's visitations supervised and also ordered SSA to consult with the mother's therapist after 90 days to determine if her visits should return to unsupervised.

"On September 19, 2018, the minor's caregiver informed SSA the child was worn out with the visitation schedule, and that 'the child has begun acting out and punching members of the family.' The minor's angry behavior continued into mid-October. An employee at the visitation center also observed the minor hitting the mother.

"At the 12-month review hearing, the juvenile court heard from numerous witnesses. After argument by counsel for all parties, the court provided a lengthy and thoughtful statement, explaining its reasons for ordering no further reunification services and setting a hearing pursuant to section 366.26.

"'Historically, it is significant that this mother was involved in a previous dependency case involving another child and half sibling to [the minor] and that the reasons for that matter were similar to [the minor's] case. [¶] In 2011, that court terminated mother's family reunification services to a son who had been medically abused by extensive, repeated, and unnecessary medical examinations. Competent medical evidence has opined that the mother engaged in this same conduct when this child was brought in to dependency at age three.'

"The juvenile court continued: 'What is compelling to this court, however, is what her therapists have stated. Her first therapist who treated her from August 21, 2017, through February 20, 2018, and who also noted that she was cooperative and never

missed an appointment, reported no progress regarding the therapy goal of addressing issues that brought this case before the court. [¶] Her subsequent and current therapist who did not testify or prepare a report for this hearing has reported that as of June 9, 2018, both she and the mother continued to talk about her not going to doctor appointments with [the minor] during her visits with [the minor]. The therapist reported that in their weekly sessions, she also agrees – the mother also agrees not to take [the minor] to the doctors. But when on her own, she thinks differently. It's, quote, the way her mind processes, close quote. On August 23, 2018, that same therapist also noted, quote, I see progress although it is a slow progress, close quote. [¶] In reading all the reports from the beginning of this year up until the first 12-month review report was issued for the September 4th, 2018 hearing, it is clear that the mother continues to obsess and focus on the child's need for medical attention. [¶] Whether this is Munchausen by Proxy or not, it is equally clear to the court that the mother has not made substantial progress with her therapy that would enable her to safely parent this five-year-old child. Her testimony that she currently believes her child should not have been removed from her care reinforces my opinion that no substantial progress has been made.'

"The juvenile court concluded: 'I find that reasonable services have been provided or offered to the mother and do not believe that the missed visitation constitutes unreasonable services under these circumstances. [¶] The court orders that a hearing be held within 120 days pursuant to section 366.26, and orders the agency to prepare an assessment and submit it to all counsel at least ten days prior to that .26 hearing.' The minute order of the same day states: 'Court finds . . . by a preponderance of the evidence return of the child to parents would create substantial risk of detriment to the safety, protection, or physical or emotion well-being of the child.'" (*M.G. v. Superior Court*, *supra*, G057002.)

II

FACTS AFTER THE MOTHER'S CALIFORNIA RULES OF COURT, RULE 8.450 PETITION FOR WRIT OF MANDATE WAS DENIED

The minor remained in the same foster home where placed in August 2017. An extensive background check of the foster family was conducted, after which SSA recommended "that parental rights of the mother . . . , and presumed father[, M.B.,] be terminated, and a permanent plan of adoption for the [minor], with the child's current caregivers . . . be ordered."

On March 14, 2019, the juvenile court conducted a hearing relating to a section 388 motion and a section 366.26 proceeding. Several documents, including SSA reports, certificate and letters, were taken into evidence. On behalf of the mother, a licensed marriage and family therapist testified.

After the therapist testified, the juvenile court denied the section 388 motion, finding the therapist's testimony unpersuasive and stating in relevant part: "What troubles me is that without seeing either of the mother's children, that she concludes that the mother and her [two children], plural, be reunited so the vital attachment bond between the parent and child remains intact. I'm not sure how she can make such a recommendation without knowing anything, really, about the older child and never have – never has met or interviewed or observed any conduct between the mother and the child before this court. But, nevertheless, that is her opinion. I don't find her opinion persuasive, and I don't believe that counsel for mother has satisfied either prong of the 388. So the motion is denied."

The juvenile court thereafter proceeded to the section 366.26 hearing. All counsel relied on the same evidence that was introduced for the section 388 motion. The court heard argument.

In issuing its ruling, the juvenile court considered the parental bond/child benefit exception found in section 366.26, subdivision (c)(1)(B)(i): "I think that in

weighing that question and discussing what the standard is when compared to the authority in the cases raised by child's counsel, we also have to determine whether that benefit overcomes the legislative preference for the stability and consistency and love that adoption would provide. I think the authorities are fairly consistent in the admission that a parent's visitation and presence at those visits will always confer some benefit to the child, but you have to weigh whether that benefit on the long-term and consistent basis overcomes not only the child's right and need for a stable home in adoption, but also weigh whether or not the issues that brought the child before the court have been overcome to such a degree that an alternative permanent plan would also be in the child's best interests. [¶] This is a terribly sad and troubling case. Inasmuch as I wholeheartedly agree that this mother deeply and dearly loves her child . . . , [the minor's] an adorable five-year-old child, and she was a constant presence in [the child's] life up until [the minor] was about three years old when [the minor] was removed because of her obsession over [the minor's] medical condition, and if the criteria at the .26 permanency hearing parental bond exception was only love, then this mother would [win] hands down. But sadly, I have to look at other factors in dealing with the parental bond exception, and I have considered those factors expressed in the [*In re] Autumn H.* [(1994) 27 Cal.App.4th 567] and [*In re*] *Beatrice M.* [(1994) 29 Cal.App.4th 1411] cases, as well as rereading [*In re*] *E.T.* [(2013) 217 Cal.App.4th 426]. And while mother's visits with her child have occurred two times a week and were reported as very loving and enjoyable to both her and the child[,] [t]hey've been monitored because of mother's ongoing obsession with the child's medical wellbeing, and the authorities require that while the visits while not necessarily daily, provide some parental activity than fun, games, and tutoring. [¶] I think describing mom in this case as a friendly visitor is not fair to her, but I also don't find that those visits support such a strong parental bond to overcome this little [child's] need for permanence and stability. I would classify mom's visits more as those of a loving aunt at the visits, if you will. She's more than a visitor,

but those visits alone don't support the requirements in the *Autumn H.* and *Beatrice M.* authorities to overcome the parental bond exception as to adoption being the permanent plan for the child." The juvenile court ordered parental rights terminated and that the minor be placed for adoption.

III

DISCUSSION

The mother contends the juvenile court erred because "substantial evidence did not support the court failing to apply the parental relationship exception to adoption." Mother argues that she maintained regular visits with her child, that child would benefit from continuing the parent-child relationship and that such a continuation would be in her child's best interest.

The statutory order of a section 366.26 disposition preference lists the first preference as: "(1) Terminate the rights of the parent or parents and order that the child be placed for adoption . . . ." (§ 366.26, subd. (b)(1).) But if certain exceptions apply, the juvenile court should not terminate parental rights. One of those exceptions is: "(B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

Both substantial evidence and abuse of discretion standards of review have been used in reviewing the beneficial relationship exception. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) With great empathy, the court explained its decision that the minor would not benefit from continuing a relationship with the mother. Applying either or both standards in the instant case, we conclude the juvenile court did not err.

IV

DISPOSITION

The postjudgment order terminating the mother's parental rights is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.